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## ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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AZ CORP COMMISSION  
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6 IN THE MATTER OF THE APPLICATION OF  
7 WILHOIT WATER COMPANY, INC'S  
8 APPLICATION FOR APPROVAL OF THE SALE  
9 OF ASSETS AND THE CANCELLATION OF ITS  
10 CERTIFICATE OF CONVENIENCE AND  
11 NECESSITY.

DOCKET NO. W-02065A-03-0490

STAFF'S CLOSING BRIEF

INTRODUCTION

12 Staff of the Arizona Corporation Commission ("Commission") supports the application by  
13 Wilhoit Water Company ("Applicant") for approval of the transfer of a portion of its assets and the  
14 cancellation of that portion of its Certificate of Convenience and Necessity ("Certificate") devoted to  
15 serve the Glenarm Farms subdivision ("Application"). However, Staff's recommendation for  
16 approval included several conditions that the Applicant must fulfill. One of Staff's conditions is that  
17 the Applicant must provide evidence to the Commission that it has resolved a \$212,926.49 property  
18 tax liability.

19 The tax liability appears to be tied to the Glenarm Farms subdivision and the money is owed  
20 to Maricopa County. Applicant is attempting to transfer part of its assets to the City of Avondale.  
21 The hearing on this case was held on December 1<sup>st</sup>, 2003. At the hearing, several legal arguments  
22 were raised regarding the tax issue. The Administrative Law Judge ("ALJ") asked that the parties  
23 brief one of the issues raised. The issue is whether the ruling in *City of Eloy v. Pinal County*, 158  
24 Ariz. 198, 761 P.2d 1102 (1988), is superseded by A.R.S. § 9-404.

EXTINGUISHMENT OF TAX LIENS

26 In *City of Eloy v. Pinal County*, 158 Ariz 198, 761 P.2d 1102 (1988), the City of Eloy  
27 purchased a piece of property in Pinal County. However, the prior owners of the property owed  
28 property taxes to Pinal County. After the sale to the City of Eloy, Pinal County sold its tax lien on

1 the property to a third party. The third party then attempted to foreclose on the property now owned  
2 by the city.

3 In the above case, the City of Eloy claimed that the property tax liens were extinguished at  
4 the time it purchased the property from Pinal County. Pinal County argued that the tax lien would  
5 not be extinguished unless Eloy purchased the property for a governmental purpose. The Court of  
6 Appeals of Arizona held that "public policy requires that tax liens be extinguished when state or one  
7 of its subordinate governmental entities acquires property for any purpose." *Id.* at 198. Thus, the  
8 Pinal County tax liens were extinguished.

9 **A.R.S. § 9-404**

10 In 1999, the tax extinguishment issue, with regard to governmental entities, was addressed  
11 by a new law. This new statute, A.R.S. § 9-404, requires all cities that purchase property "pay to the  
12 county treasurer any taxes on the property that were unpaid as of the date of acquisition, including  
13 penalties and interest." A.R.S. § 9-404(A) (2003). Furthermore, there is no longer an  
14 extinguishment of tax liens for "unpaid delinquent taxes, penalties and interest on property acquired  
15 by a city." A.R.S. § 9-404(B)(1) (2003).

16 The above statute was originally Senate Bill 1031. 1999 Ariz. Legis. Serv. Ch. 76, § 1.  
17 Senate Bill 1031 was initiated to take precedence over the Court of Appeals holding in *City of Eloy*  
18 *v. Pinal County*, 158 Ariz. 198, 761 P.2d 1102 (1988). In the legislative history of Senate Bill 1031,  
19 the legislature specifically mentions the *Eloy* case. *Id.* at 198. Furthermore, the legislature points  
20 out that the purpose of Senate Bill 1031 is to "require every governmental entity in the state to pay  
21 the delinquent property taxes to the respective county treasurer upon acquisition of that property."  
22 Final Revised Fact Sheet for S.B. 1031 (1999) (see attached as **Exhibit A**). Consequently, cities are  
23 now required to pay delinquent property taxes attached to the property they acquire.

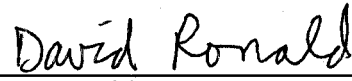
24 **CONCLUSION**

25 In light of the above and the record in these proceedings, Staff's position is that A.R.S. § 9-  
26 404 takes precedence over the ruling in *City of Eloy v. Pinal County*, 158 Ariz. 198, 761 P.2d 1102  
27 (1988). In

28 ...

1 addition, Staff asks that the Commission adopt Staff's recommendations concerning other matters  
2 related to Applicant's application as provided in the hearing and in this brief.

3  
4 **RESPECTFULLY SUBMITTED** this 8<sup>th</sup> day of December 2003.

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11 The original and thirteen (13) copies  
12 of the foregoing were filed this  
13 8<sup>th</sup> day of December 2003 with:

13 Docket Control  
14 Arizona Corporation Commission  
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